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VIA ELECTRONIC MAIL

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Chairman and Members
Joint Select Committee on the Implementation of Amendment 64 Task Force Recommendations
Colorado General Assembly
State Capitol
Denver, Colorado 80202

Re: Amendment 64; "Alcohol Marijuana Equalization Initiative"; Colorado Constitution, Article XVIII § 16

Dear Chair and Members:

We are pleased to provide the following comments regarding Amendment 64 and the Governor's Amendment 64 Task Force non-binding recommendations to the Legislature.

By way of experience and credentials, Robert J. Corry, Jr. was a co-author of Amendment 64, and assisted in the framing of the constitutional amendment placed before voters. Lawyers from this firm represented the official campaign committee, the "Alcohol Marijuana Equalization Initiative Committee," in litigation, and campaigned extensively in favor of Amendment 64. The campaign worked extremely hard, for years, to establish dialogue with all stakeholders, and the drafting of Amendment 64 required thousands of hours of collaboration from many people. Since 2001, lawyers and staff from this firm have spent many thousands of hours every year in criminal and civil courtrooms across the State of Colorado dealing with marijuana-related cases. We have successfully handled well over one hundred civil and criminal cases throughout the State dealing with medical

marijuana, have brought to jury verdict more medical marijuana cases than all other Colorado attorneys combined, and have represented hundreds of marijuana dispensaries, patients, caregivers, and other related individual and business clients. We brought key litigation that helped to usher in the Medical Marijuana industry including the landmark 2007 case of LaGoy v. Ritter, striking down the "five patient per caregiver" limit which created the legal opportunity for dispensaries and growing, and an entire new industry, to exist. The firm's principal, Robert J. Corry, Jr., previously served on the Department of Revenue Medical Marijuana Rulemaking Workgroup. He also served as Majority Counsel to the U.S. House of Representatives Judiciary Committee, and has his J.D. from Stanford Law School and a B.A. from the University of Colorado-Boulder.

Amendment 64, now codified as part of the Colorado Constitution, Article XVIII § 16, passed with a strong 55% majority of support of Colorado voters. In adding this provision to our State's Supreme Law, voters desired to equalize the treatment of marijuana with alcohol, and more importantly, to end criminal Prohibition of marijuana and cease the use of Colorado's over-burdened criminal justice system as a regulatory social engineering tool for marijuana.

Amendment 64 was specifically drafted and sold to the public as the "Alcohol Marijuana Equalization Initiative." The campaign was conducted along these lines, both sides had ample opportunity to present their respective messages, and Colorado voters responded favorably to Amendment 64 and to the idea of treating marijuana like alcohol. The clear intent of the drafters of the initiative was to treat and regulate marijuana in a manner similar to alcohol, end Prohibition, and remove marijuana enforcement and regulation from Colorado's overburdened criminal justice system. Unfortunately, few of the Task Force recommendations resemble Colorado's alcohol laws and regulations. Many of these recommendations would continue Prohibition and embolden the Black Market, and many of the principal recommendations are also contrary to basic economic laws of supply and demand. Some of the recommendations are appropriate. Our support of, or opposition to, each recommendation is noted herein. For space reasons, in some cases if we agree with a particular recommendation, we do not necessarily explain why we support it. If we oppose a particular recommendation, we do explain why.

Amendment 64 was specifically and intentionally drafted so that the regulatory authority lies directly with the Colorado Department of Revenue. See Colorado Constitution, Article XVIII § 16(5)(a) ("Not later than July 1, 2013, ***the Department*** shall adopt regulations necessary for the

implementation of this section.") (emphasis added); § 16(2)(c) (definition of "Department" as the Department of Revenue). The Legislature should not waste its valuable time with formulating regulations, and should instead focus on the more narrow and pressing task of eliminating statutory provisions that conflict with Amendment 64. The drafters, myself included, specifically empowered the Department of Revenue as opposed to the Legislature, since it was the Legislature that saddled the public with the inefficient Medical Marijuana regulated model in House Bill 10-1284, which has cost the State thousands of jobs and millions in lost revenue, and has left the unregulated and untaxed Black Market in place.

The Task Force was distracted by amorphous, alleged, but unattributed, wishes of a Federal Government that it is Colorado's job to prevent the out-of-state "diversion" of marijuana. No actual Federal official has ever gone on record as stating that out-of-state "diversion" is a Federal priority, and yet the Task Force allowed this fake bogeyman to taint much of its work. In fact, the U.S. Department of Justice and U.S. Attorney for Colorado are firmly on record as establishing its core priority of excluding marijuana-related activities outside of 1000 feet from schools, while permitting all other marijuana-related activities in Colorado to continue with minimal Federal interference. Thus, the unattributed Federal strawman argument should not be the foundation of important public policy in Colorado.

Out-of-state "diversion" is already illegal under Colorado law (pre- and post-64) and also the law of whatever jurisdiction receives the marijuana. It should be prevented to the extent possible. However, the bulk of the Task Force recommendations would *increase* the out-of-state shipping of marijuana, not reduce it.

The Task Force was constructed from a flawed premise at the outset, and conducted itself with a lack of procedure and accountability. Luckily, the entirety of the Task Force work is non-binding on this Legislature, which should resist the temptation to "rubber stamp" these recommendations. First and foremost, the membership of the Task Force was determined principally by a Governor, with roots in the alcohol industry, who actively opposed and aggressively campaigned *against* Amendment 64, even going so far as to donate his valuable time to cut and air political advertisements against the measure. The makeup of the Task Force thus reflected the bias of the Governor who appointed them, with a majority of the members in opposition to Amendment 64, not reflective of the strong public support for the measure. Second, the Task Force permitted non-members of the Task Force to "vote" on measures, but nowhere was any vote on any measure recorded

or tabulated, so accountability of members or their self-identified "proxies," and even the integrity of votes themselves, is questionable. This General Assembly would never allow its members to designate "proxies," and any contested vote is recorded for accountability. Last, the Task Force ignored and did not even consider significant public recommendations brought before it. The work of the Task Force was hijacked by a minority faction of the existing Medical Marijuana Industry (a minority of whom opposed Amendment 64) as well as by the Prohibition lobby itself. For example, we attended Task Force meetings, and brought forth the following narrowly-tailored suggestions in written form to every member of the Task Force, all of which are obvious policies flowing directly from Amendment 64, but the Task Force never even considered them, much less voted for or against them.

The Colorado Constitution, through Amendment 64, now specifically provides that any violation of Amendment 64 should be dealt with as a civil administrative matter, not as a criminal case. See Colorado Constitution, Article XVIII §16(5)(a)(IX) ("civil penalties for failure to comply with regulations made pursuant to this section.") Accordingly, significant changes will need to be made to Colorado's criminal statutes to reflect the new post-Prohibition desires of the electorate. The Joint Committee should consider the following actions or statutory reforms to fully implement the will of the voters in adding Article XVIII § 16 to the Colorado Constitution:

1.) The Drug War is Over, Prisoners of War Should be Released

The State should consider amnesty, pardon, or commutation of sentence for all individuals in Colorado currently serving a sentence of prison, jail, parole, or probation for any previous "crime" related to marijuana that is no longer a crime under Amendment 64, Article XVIII §16 of the Colorado Constitution. Recently, Governor Hickenlooper appeared on public radio to agree that it was unjust for any person to serve a sentence for a previous marijuana "crime" that is no longer a crime, but claimed that his office and the Executive Branch lacked the resources to consider and issue gubernatorial pardons for individuals applying for said pardons under the pardon process. See Colorado Constitution, Article IV § 7; C.R.S. § 16-17-101 *et seq*. Since the "War on Marijuana" is now over and Prisoners of War must released when any war is over, this law firm will donate our staff time--with no expense to the State or its taxpayers--to review and evaluate any pardon application and underlying criminal court file provided from the Governor's office and provide a recommendation to the Governor as to whether the underlying criminal offense is no longer an offense, and whether

a pardon should be issued to a particular POW. If the Governor is unwilling to work with us in the pardon process, the legislature could still pass an amnesty bill automatically commuting any marijuana-related sentence.

2.) Record Sealing for a Fresh Start

Automatic sealing of all criminal records related to any previous marijuana-related conviction, so that previous offenders who have served their sentence can obtain employment, obtain rental housing, apply for governmental licenses or benefits, clear their good names, and wipe the slate clean, in order to provide for their families. See C.R.S. § 24-72-308. The voters have shown that now is indeed the time to "forgive and forget."

3.) Restoration of Civil Rights

Restoration of rights to keep and bear arms for any individual convicted of a marijuana-related felony that is no longer a crime under Amendment 64. Current federal and state law permits the Governor to restore the right of self-defense to any previously convicted felon on an individual basis. This should be done for people who have served their time and paid the price for something that is no longer even a crime.

4.) Reschedule THC at State Level

It is a little-known fact that the State of Colorado independently schedules controlled substances, in addition to the federal scheduling. The Legislature should consider removal of cannabis and its active ingredient, tetrahydrocannabinols ("THC"), from the scheduling of drugs under Colorado law. Presently, cannabis and THC are contained in Schedule I under Colorado law. See C.R.S. § 18-18-102(35); C.R.S. § 18-18-203(2)(c)(XXIII). Alcohol is not scheduled at all in Schedules I-V under State law, and marijuana should be equalized with alcohol. It is ludicrous for Colorado itself to schedule cannabis and THC as Schedule I when it previously requested the U.S. Government to reschedule cannabis from federal Schedule I. See HB 10-1284.

5.) Overhaul Colorado Criminal Code

Significant changes must be made to bring Colorado's criminal laws in line with Amendment 64, such as removal of criminal penalties for adults age 21+ related to marijuana presently contained in Colorado law. As noted, any deviation or overreach from the parameters of Amendment 64 by an adult age 21+ are now remedied by a civil fine only, no prison, no jails, no

probation, no community service, no criminal or punitive sanction other than by monetary fine. The following criminal statutes should be repealed or substantially amended, and removed from the criminal code and placed as civil administrative matters. See C.R.S. § 18-6-401(1)(a)(c)(I) (alleged "child abuse" to grow marijuana in same premises where child resides); C.R.S. § 18-18-406 (marijuana prohibition); C.R.S. § 18-18-406.1 (synthetic marijuana; synthetic alcohol, i.e. non-alcohol beer, is acceptable); C.R.S. 18-18-406.2 (synthetic marijuana); C.R.S. § 18-18-406.5 (use of marijuana in detention facility); C.R.S. § 18-18-407 (special offender); C.R.S. §§ 18-18-425-430.5 (paraphernalia).

6.) Reform of Intrusive Testing Requirements for THC

The State should consider removal of conditions of pretrial release, bond, parole, or probation that the individual refrain from the possession or consumption of marijuana. The monitoring of compliance can only be through intrusive, unsafe, unsanitary, dirty, humiliating, and potentially dangerous blood or urine tests, extreme measures that have no place in the routine operations of a free society and where the degrading tests are probably more damaging and antithetical to rehabilitation of the offender than the substance itself. This is unlike alcohol, abstinence of which can be easily monitored through a breath test, and which exacerbates criminal behavior more than marijuana.

7.) Preserve Parenting Rights

The Legislature should consider statutory codification of the Colorado Court of Appeals decision in In Re Marriage of Lyman, 240 P.3d 509 (Colo. App. 2010), which held that marijuana use alone, without any additional evidence, could not constitute child abuse or child endangerment, and could not be the basis for the removal of parenting rights. This law firm successfully represented the father in that case on appeal, who was reunited with his seven-year-old daughter after a trial court previously separated father and daughter only because of the father's use of marijuana. This binding appellate decision should be enshrined in statute to protect children from losing a parent due to societal prejudice against legal marijuana users who are good parents.

Lawyers from this firm would be happy to assist the Legislature in crafting legislation on any of the above subjects.

As far as the Task Force recommendations, we have the following positions and considerations:

"Individual Rights" Option

In general, Coloradoans and tourists will have a legal and viable alternative if the government unwisely seeks to over-regulate the retail market. Amendment 64 was specifically designed to include unregulated individual constitutional rights held by every adult 21+ in Colorado, to act as a "safety valve" in the event that government regulation of the retail market squeezed too hard and artificially restricted the supply to the willing public.

Amendment 64 specifically cites ***"enhancing individual freedom"*** as the core purpose of the amendment. Colorado Constitution Article XVIII § 16(a)(1). Tellingly, the Task Force does not include individual freedom as one of its "Guiding Principles." The Task Force strays from this principle throughout its recommendations.

This individual right option, which applies statewide, is not subject to regulation nor taxation, and cannot be repealed or banned in any jurisdiction within Colorado, and affords every adult the constitutional right to do the following:

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR THE LAW OF ANY LOCALITY WITHIN COLORADO OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.

(b) POSSESSING, GROWING, PROCESSING, OR TRANSPORTING NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING PLANTS, AND POSSESSION OF THE MARIJUANA PRODUCED BY THE PLANTS ON THE PREMISES WHERE THE PLANTS WERE GROWN, PROVIDED THAT THE GROWING TAKES PLACE IN AN ENCLOSED, LOCKED SPACE, IS NOT CONDUCTED OPENLY OR PUBLICLY, AND IS NOT MADE AVAILABLE FOR SALE.

(c) TRANSFER OF ONE OUNCE OR LESS OF MARIJUANA WITHOUT REMUNERATION TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(d) CONSUMPTION OF MARIJUANA, PROVIDED THAT NOTHING IN THIS SECTION SHALL PERMIT CONSUMPTION THAT IS CONDUCTED OPENLY AND PUBLICLY OR IN A MANNER THAT ENDANGERS OTHERS.

(e) ASSISTING ANOTHER PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IN ANY OF THE ACTS DESCRIBED IN PARAGRAPHS (a) THROUGH (d) OF THIS SUBSECTION.

Colorado Constitution, Article XVIII § 16(3), Personal Use of Marijuana.

Lawyers from this firm have set up over a dozen adult agricultural collectives since the passage and enactment of Amendment 64, which are intended to fill the gap until the regulated retail market is fully implemented. These agricultural collectives operate in full compliance with all applicable state and local laws, ordinances, and regulations, distinct from the Black Market. These collectives do not sell marijuana, and are instead only provided with direct and precise reimbursement for their documented out-of-pocket expenses. The Constitution allows these operations to stockpile unlimited amounts of marijuana on the cultivation premises under § 16(3)(b), and allow an unlimited number of adults to join in and designate their six plants to the collective for "assistance" under § 16(3)(e). For example, every Medical Marijuana dispensary currently operating in California -- and there are hundreds there including the largest one in the world -- operates as a non-profit collective.

Operators of these collectives in Colorado would prefer to transition into the taxed, regulated, marijuana market as retailers and/or wholesalers when such market is implemented in October 2013, as contemplated under Amendment 64. However, if these Task Force recommendations are adopted, then these collectives will continue indefinitely since operators will be shut out of the regulated system, which will produce inferior marijuana at an artificially-government inflated price. The regulated system will fail if the government squeezes too tightly.

In light of this general concern, we hope the Legislature will consider our thoughts on the following specific recommendations of the Task Force.

Since many of the recommendations are interlinked, some of these comments on particular recommendations could apply to the whole package:

Recommendation 1.1 Vertical Integration

This recommendation, for "common ownership" of producer and retailer, includes in other recommendations a one to three-year monopoly on for-profit sale of recreational marijuana, a government-granted monopoly to be held by the existing Medical Marijuana Industry. To use an analogy, "common ownership" essentially means that a supermarket would be required to own the apple orchards, cattle ranches, cornfields, wheat fields, orange groves, peanut farms, tomato plants, dairies, etc., any garden or operation that makes produce or products sold on the store shelves, the retailer must own it. There is no other industry in Colorado nor the face of the Earth required to comply with such an irrational and unworkable requirement as common ownership.

We strongly oppose this "social engineering" recommendation. Lawyers from this firm have represented and set up hundreds of the existing Medical Marijuana dispensaries since 2001. We brought key pieces of litigation allowing this industry to start and to flourish. We helped to create this industry from nothing, and know and understand its fundamental essence well. Minority factions, that are unrepresentative of the industry and its consumers, such as the so-called "Medical Marijuana Industry Group" (the sole member of which is the River Rock Medical Marijuana Center), in endorsing Common Ownership are simply engaging in "rent-seeking" behavior, afraid of competition in an open market, and seeking this Legislature's assistance in suppressing fair and open competition.

Currently, the Medical Marijuana consumer base consists of approximately 108,000 licensed Medical Marijuana patients, i.e. those who hold "red cards" issued by the Colorado Department of Public Health and Environment, Medical Marijuana Registry. Vertical Integration is not even practiced in the current Medical industry, since Medically-Infused Product Manufacturers ("MIPs") licensees are permitted to be pure wholesalers under current law and regulation. In fact, they are required to wholesale and cannot retail under the MIPs license.

Although there are many hard-working and well-meaning individuals currently owning or working in the existing Medical Marijuana Centers and Cultivation Operations, the present industry is utterly incapable of satisfying the ***current demand*** from their 108,000 customers. It cannot meet the

increased demand from Amendment 64, and would turn over that demand to the untaxed and unregulated Black Market as an economic reality.

Presently, under the Medical Marijuana regime, as soon as marijuana is produced, it is gone from the shelves. Demand presently outstrips supply. This is the status quo. It should not continue. The present industry -- if the government artificially locks it in and grants it a monopoly -- would fail to meet increased demand created by Amendment 64, which increases the potential customer base from 108,000 to every one of the 4,000,000 adults in Colorado, plus any visitor or tourist who sets foot in the State.

Moreover, the basic design of the current Medical Marijuana Industry does not fit with, and will not translate to, Amendment 64. The current industry limits retailers and producers to "plant counts" based on the number of patients designating a particular Center as their "Provider." Each Center is permitted to cultivate six plants per patient. There are three classes of Centers based upon their patient count.

By contrast, Amendment 64 has no way for an adult to "designate" a specific retailer, and has no plant count limits for wholesalers, just as a liquor store or bar is not legally limited in size by any requirement that its customers designate it. These limits on size of Medical Marijuana Centers mean that that industry cannot easily transition itself to handle the entirety of recreational demand, without some new additions and arrivals to the industry to supplement the MMCs that will transition over to recreational.

The current Medical Marijuana industry, if Government mandates that it be stagnant, with the same tired old players, no new blood, no new capital, no new ideas, and it will fail. The Black Market will fill the void, and will pay zero taxes, follow no regulations, undercut the inflated regulated price of marijuana, and defeat the voters' intent.

Even on the legitimate regulated side, Common Ownership/Vertical Integration would deprive the State of Excise Taxes, which Amendment 64 designs to go towards school construction. Colorado Constitution Article XVIII § 16(5)(d). If the same entity owns the production and retail functions, there can be no excise taxes collected, since transfers within the same entity are not taxed in a meaningful way. Vertical Integration/Common Ownership cheats the State out of millions in tax revenue, to the detriment of school construction and the State's schoolchildren.

A principal justification used for Vertical Integration was that the Federal Government wants it. There is no support for that assertion. The Federal Government has said nothing that even remotely resembles that assertion. Washington State's new marijuana legalization initiative, passed the same time as Colorado's, affirmatively *prohibits* vertical integration because it leads to monopolies and market domination, and can harm the consumer and the public interest. There is no evidence whatsoever that the Federal Government intends to intervene in Washington State because it prohibits vertical integration.

Common ownership artificially suppresses the market and thus costs jobs, and degrades and devalues workers who work within a monopolistic enterprise and lose collective bargaining power. Growers should have the freedom to operate as independently licensed growers and wholesalers who can concentrate on their core competencies rather than being owned by a retailer. That was the intent of Amendment 64, which provides explicitly for separate licenses of four varieties; retail, wholesale, infused manufacturing, and laboratory.

There is nothing wrong with a hard-working business that provides a quality product at a fair price, in an open and fair market. There is everything wrong with "Crony Capitalism" that seeks, and receives, and Government-granted Monopoly to shut the door on competition and provides an inferior product at an artificially inflated price.

Amendment 64 itself prohibits regulations that are "unreasonably impracticable." Colorado Constitution Article XVIII § 16(5)(a). "Unreasonably impracticable" is defined by Amendment 64 "means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy or being carried out in practice by a reasonably prudent businessperson." Colorado Constitution Article XVIII § 16(2)(o).

Vertical Integration, linked with a its proposed moratorium on any new applicant, shuts the door completely on new reasonably prudent businesspeople, and is unreasonably impracticable, thus would violate Amendment 64 by its own terms.

Common Ownership/Vertical Integration will restrict the industry and cost jobs, deprive the State of tax revenue, and enhance the Black Market. It should be rejected in both the new Recreational Marijuana industry and the Medical Marijuana industry as well.

Recommendation 1.2 State-Run Model

This recommendation, for State employees selling marijuana at State-owned stores, was rejected by the Task Force and is not a serious idea, as it has no basis in the actual text of Amendment 64. Although the idea is interesting on a philosophical basis, it is telling that the Task Force squandered its time and effort considering this suggestion, while instead ignoring other more directly relevant and pressing issues.

Recommendation 1.3 State and Local Licensing

This recommendation provides that local governments must approve a license before the State will issue a license. It turns Amendment 64 on its head. A locality "may," but is not required to, enact regulations under Amendment 64. See Colorado Constitution, Article XVIII § 16(5)(f). A locality is only required to designate the local entity that will process applications. See Colorado Constitution, Article XVIII § 16(5)(e) (a locality "shall" specify the entity responsible for processing applications). Amendment 64 provides that if the local entity fails to act, which would be through no fault of the proposed licensee, then the license is automatically operative if the State approves. It is expected that all local governments will pass local ordinances and regulations in a timely fashion, but if a local entity simply fails to act, then consumers and businesses in the locality should not be penalized. We oppose this recommendation.

Recommendation 1.4 Single Marijuana Enforcement Division

This recommendation would consolidate the functions of the current Medical Marijuana Enforcement Division ("MMED") within a new entity in the Department of Revenue that would handle both medical and recreational marijuana. MMED has been saddled in the past with unenforceable mandates from House Bill 10-1284, and has struggled with its mission and budget, a predicament not entirely its own fault. As noted above, the drafters of Amendment 64 intended that it would be the Department of Revenue that promulgates regulations, not the Legislature. Accordingly, Amendment 64 evinces a level of trust for the Department of Revenue over the mess created by the Legislature in H.B. 10-1284. As a drafter of Amendment 64, it was our intent to empower the actual regulators on the ground, who enforce the current regulations, to design the new regulations and avoid the unenforceable pitfalls such as the 70/30 requirement, which is currently enforced only "on paper" and not in fact, because it is impossible to precisely document.

It makes sense to consolidate and streamline governmental functions. However, the regulatory structure, environment, and customer base for recreational marijuana under Amendment 64 should and will be markedly different from that under Amendment 20, Medical Marijuana. A single agency would be appropriate for both medical and recreational as long as the agency recognizes the legal, factual, and practical differences between the two. We are confident in MMED's ability to avoid the mistakes of the past unless the Legislature ties its hands into yet another constricted regulatory paradigm. Accordingly, we conditionally support this recommendation if the new agency can be disentangled from the old regulations.

Recommendation 2.1 Financing Plan

This proposal is to fund the new Marijuana Enforcement Division ("MED") out of the General Fund, with revenue from the regulated industry to also be deposited into the General Fund. As noted above and below, if the other recommendations are adopted, the amount of revenue flowing into State coffers from license fees will be a stagnant trickle since the Legislature will lock in the existing already-licensed players. The State will thus be confronted with the same predicament as last year, where the fee-starved MMED unsuccessfully proposed an unconstitutional raid on the Department of Public Health and Environment Medical Marijuana Registry funds, and this Legislature wisely rejected that effort.

The revenue from sales and excise taxes will also be low for the reasons expressed herein. The first $40 million in excise taxes (a figure that will not be reached if there is over-regulation) is already designated for school construction under Amendment 64. Accordingly, the new MED will be poorly funded, and again unable to exercise its duties.

If significant aspects of the recommendations are not enacted and regulation is instead workable, reasonable, and practical, then this Recommendation 2.1 could make sense.

Recommendation 2.2 – Application Fees

This recommendation would allow the Legislature to define in what circumstances an application fee, already set at $5000.00 may be raised to cover greater expenses. The $5000.00 fee is already a high barrier to small, women- or minority-owned startup-type businesses. Although Amendment 64 does allow for higher fees, the Legislature should resist the temptation to

set fees too high, which will constrict the market, cost us jobs, and harm the public interest.

Additionally, if the other market-suppressing monopolistic recommendations are adopted, such as the exclusion of currently unlicensed individuals, 70/30, Vertical Integration/Common Ownership, and moratoria, then the application fees that go into the state and local coffers will also be reduced and the regulated system will fail, replaced by the Black Market, which will not pay any $5000.00 threshold fee nor taxes, thus undercutting its over-regulated competition.

Recommendation 2.3 – Licensing Fees

This recommendation would empower various agencies to increase the licensing fees, as opposed to application fees, for existing enterprises to recover the contemplated loss of application fees if the market for new entries is choked off entirely under the other regulations.

A massive increase in the licensing fees, as with other burdensome regulations, would benefit the large entities at the expense of existing small shops. It may be necessary to increase the licensing fees significantly if the Legislature adopts the other recommendations, prohibiting new blood into the industry. Then, the Black Market will undercut the over-taxed and over-assessed regulated market, killing jobs, against the public interest and against the intent of Amendment 64.

Recommendation 2.4 – Operating Fees

For the same reasons as in 2.2 and 2.3, the State should be wary of over-burdening the regulated side of recreational marijuana industry with fees and taxes, because this will artificially constrict the market, cost us jobs, and empower the Black Market, against the public interest.

Recommendation 3.1 – Tax Clarification

This recommendation simply clarifies that it was the intent of Amendment 64 that a separate vote of the electorate will need to be taken for the excise tax for transactions between a retail facility and a cultivation facility. Colorado Constitution, Article XVIII § 16(5)(d). We agree with this recommendation. A separate vote is required under TABOR. It should be noted that if vertical integration, 70/30, and restriction or moratorium granted to existing medical marijuana industry are mandated, little excise tax will ultimately be collected, and the untaxed Black Market will flourish.

Recommendation 3.2 – Sales Tax

This recommends a 25% sales tax on retail sales of marijuana to make up for the Task Force's admitted shortfall that will result from its other market-constricting recommendations. Another vote of the people will need to be taken. If the 25% figure is approved, then regulated retail marijuana will be taxed at an effective rate of **nearly 50%:** 25% marijuana sales tax + 15% excise tax + 2.9% state sales tax (7.62% in Denver and similar in other localities) = **47.62%** total tax rate.

As with many of the other job-killing regulations, an excessive 50% tax rate will be undercut by the Black Market, which is untaxed. Exxcessively high tax rates promote cheating in the regulated market as well. Since this remains a "cash" business due to banking problems, collecting these high taxes will be a logistical problem.

Recommendation 3.3 – Excise Tax Escalator

This recommendation would increase the excise tax after 2017. For the reasons above, excessive taxation of this industry would be counterproductive and against the public interest. This recommendation also suggests that a "vertically integrated" entity's *internal* transfers of marijuana, *within the same entity*, from production to retail facility, could somehow be taxed. The incentive and ability to cheat is magnified. Strangely, internal taxing of an entity removes the benefits of vertical integration, and like so many other recommendations of this Task Force, will empower the Black Market to capture the demand.

Recommendation 4.1 – Residency Requirements for Owners and Employees

This recommendation that any business investor or owner be a Colorado resident for two years, has no place in Colorado. It is discriminatory, exclusionary, offensive, and should sicken any Coloradoan who wishes for a more vibrant and robust economic recovery here. It is not the American Way, nor the Colorado Way, to shut our doors to immigrants and new arrivals, who come here to pursue a dream of opening a business. If someone desires to do business in Colorado, we should welcome them and their capital, and the jobs they will bring, as we do in every single other industry.

There are many effective people of goodwill in the 49 other states and other Nations of the World who wish to bring money, jobs, and business acumen to Colorado. This recommendation probably racially discriminates against non-whites as well, since minorities and immigrants are disproportionately more likely to move to the U.S. or to Colorado to open a new business. This ostrich-like, regressive protectionist recommendation has no place in a State that spends taxpayer money to attract business to this State. It is a job-killer. This recommendation is inspired by those who wish government protection for a monopoly, and fear fair competition from newcomers who might have better ideas and business practices. Competition in a free market brings out the best in all of us, and ought to be encouraged.

Discrimination against recently-arrived residents of Colorado invokes the Privileges and Immunities, Equal Protection, and Commerce Clauses of the U.S. Constitution. Saenz v. Roe, 526 U.S. 489 (1999); Paul v. Virginia, 75 U.S. (8 Wall.) 168, 180 (1868) ("without some provision . . . removing from citizens of each State the disabilities of alienage in other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."); Dunn v. Blumstein, 405 U.S. 330, 334 (1972); Arlington County Bd. v. Richards, 434 U.S. 5 (1977); Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951); Shapiro v. Thompson, 394 U.S. 618, 629-31, 638 (1969); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Jones v. Helms, 452 U.S. 412, 420-21 (1981); Oregon v. Mitchell, 400 U.S. 112, 236-39 (1970) (Justices Brennan, White, and Marshall), and id. at 285-92 (Justices Stewart and Blackmun and Chief Justice Burger); Crandall v. Nevada, 73 U.S. (6 Wall.) 35 (1868); Edwards v. California, 314 U.S. 160 (1941) (both cases in context of direct restrictions on travel); United States v. Guest, 383 U.S. 745, 758, 759 (1966), and id. at 763-64 (Justice Harlan concurring and dissenting), id. at 777 n.3 (Justice Brennan concurring and dissenting); San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 31-32 (1973); Zobel v. Williams, 457 U.S. 55, 60 & n.6 (1982), and id. at 66-68 (Justice Brennan concurring), 78-81 (Justice O'Connor concurring).

Recommendation 4.2 – Review of Suitability Requirements for Licensees

This recommendation is to continue the ban on previous drug felons from participation after they have paid their debt to society and already suffered enough. Like so many others, this recommendation constitutes

protectionism and irrational barriers to otherwise qualified individuals from turning their skills into something that can legally provide for their families.

The intent of Amendment 64 was to free the Prisoners of War from the Drug War that is now over. A ban on previous felons only continues the negative impacts of the Drug War that Colorado voters wanted to consign to the ash heap of history.

It would only preserve the same tired old players in the current industry and empower the Black Market to seize and meet the inevitable increased demand.

This recommendation also perpetuates racial discrimination. For a variety of complex social factors including poverty, members of minority groups are disproportionately convicted of felonies. A ban on felons thus operates in a racially discriminatory fashion. Whether that discrimination is intentional or not, the result is that fewer minorities will be able to enter into this industry. It is interesting that the 25-person Task Force did not have a single African-American member, because more than any other group, African-Americans have been disproportionately incarcerated and harmed by Marijuana Prohibition policies.

Recommendation 4.3 – Responsible Vendors Program and Statewide Advisory Group

This recommendation is for a "voluntary" program to encourage licensees to be "responsible" and adhere to a so-called "code of ethics" as they commit felony violations of the United States Code and sell federally-illegal Schedule I controlled substances, for profit.

So long as such a program is truly "voluntary," this recommendation is largely unoffensive, except to basic logic, since these self-proclaimed "responsible" and "ethical" vendors will be admitting to commission of a felony under federal law. The recommended "advisory board" should do little harm if such program does not become the *de facto* standard, and instead remains voluntary.

Recommendation 5.1 – Complete Transition from Medical to Adult-Use Marijuana

This recommendation covers the logistical transition from Medical Marijuana businesses to recreational marijuana businesses. Such a transition will occur in most of the current Medical businesses since the consumer base

for Medical will decline in the rate and numbers of Medical Marijuana Registry cards over time. The transition process should be as smooth and quick as possible, and this recommendation seems to encompass that.

However, the new recreational licenses, as noted above, cannot be confined to the existing medical establishment since it is incapable of meeting the renewed demand, especially since the size and design of Medical Marijuana Centers is tied to, and limited by, the number of patients designating said Center, and the recreational system envisioned by Amendment 64 has no such limitation.

Recommendation 5.2 – Partial Transition for Cultivation and Manufacturing

This recommendation would permit a currently licensed Medical MIP or Cultivation licensee to maintain part of their plants and inventory for Medical purposes and part of their plants and inventory for recreational purposes. This is a good recommendation that makes sense. It should be adopted.

Recommendation 5.3 – Partial Transition for Cultivation and Retail

This recommendation would permit a currently licensed Medical MMC or Cultivation licensee to maintain part of their plants and inventory for Medical purposes and part of their plants and inventory for recreational purposes. This is a good recommendation that makes sense. It should be adopted.

Recommendation 5.4 – Separation of Inventories in Dual-Use Cultivation and Manufacturing

This recommendation requires and allows the separation of Medical and Recreational marijuana in licensed facilities where both are practiced. It is a good recommendation that makes sense, except for the excessive documentation, that would be required, as well as the separation itself. The marijuana plant is the same biological organism whether it is used for medical or recreational purposes.

The fact that the recommendation advocates for such unnecessary bean-counting highlights an interesting feature of the so-called "seed to sale" obsession that permeates the government's efforts to regulate this industry. Although the Medical Marijuana industry is limited by plant counts, there is nothing in Amendment 64 that limits licensees to a particular plant count or

quantity of useable marijuana. The intent of the drafters, me included, was to treat marijuana like alcohol and liberate producers from any numerical or plant limits on their production in a free market. No brewery or alcohol producer is limited in the amount of kegs that can be produced; the market itself regulates their production, which is how it should be for the legal marijuana market as well. Any contrary requirement gives the Black Market an advantage, because it has no arbitrary production limits.

Recommendation 5.5 – Complete Separation in Dual-Use Medical and Retail

In contrast to 5.4 above, this recommendation is for total separation between Medical and Recreational in retail locations, based on the fact that sub 21 year olds can purchase medical marijuana, but not recreational. Complete separation is unnecessary, since a licensee must require the purchaser to present identification to determine whether he or she is purchasing for medical or recreational purposes.

Recommendation 6.1 – Commercial Transportation of Marijuana

This recommendation is for regulations requiring the safe transportation of marijuana, and reams of paper printed and carried to "justify" the transport, which happens thousands of times a day in Colorado currently. Trees will die unnecessarily to document every stage of normal business conduct. No regulations are necessary in this arena. The producer and seller already have every incentive and will protect the safety of their own valuable property in transit, without governmental "assistance" or oversight. The license itself should confer on the licensee the ability to transport.

Recommendation 6.2 – Disposal of Marijuana, Products, and Waste

This recommendation identifies a significant hole in the current regulatory scheme: what to do with marijuana waste, that should not be thrown away in dumpsters or household garbage, and should not be burned either? The government created the problem through Prohibition, the government could operate or contract with private operators of marijuana waste disposal facilities throughout the State. This is a good recommendation and should be adopted.

Recommendation 7.1 – Purchase of Marijuana by Residents and Visitors

This recommendation is for different limits on retail purchase by residents and visitors, one ounce for Coloradoans and ¼ to 1/8th of an ounce by nonresidents. Differential limits are not authorized under Amendment 64 nor the U.S. Constitution. Any adult present in Colorado is entitled to full and free exercise of his or her freedom under our laws.

The premise of the recommendation, that it will prevent "diversion" out of state, exposes the lack of understanding of this community by the Task Force. If there is "diversion," it will be in the form of pounds and wholesale quantities, purchased from the Black Market (which will expand if the other recommendations are adopted). Only minor diversion will come from marijuana purchased at retail, especially if the retail price is inflated due to over-regulation and over-taxation.

Ironically, if the other task force recommendations are followed, then the regulated entities' main source of business may be out-of-staters willing to pay inflated costs so they can conveniently exercise their freedoms while on vacation in Colorado. Residents will be "diverted" to collectives and the Black Market, which will be able to charge 50% less for untaxed, unregulated marijuana that will be of higher quality since producers are concentrating on marijuana, not concentrating on printing out copious government forms in triplicate to satisfy some imaginary bureaucratic concern.

The cases cited above as to residency restrictions on licensees would partially apply to the residency restriction or limit on purchases as well.

Recommendation 7.2 – Automated Dispensing Machines

This recommendation is to allow for automated dispensing machines at licensed entities. This recommendation makes sense, especially with its discussion of deferring to "business decisions," a perspective that should have been applied to the other recommendations. Automated dispensing machines ought to be allowed, given that anonymity in the transaction is an important value under Amendment 64. This recommendation is a good one and should be followed.

Recommendation 8.1 – Signage, Marketing, and Advertising

This recommendation is for blatantly unconstitutional restrictions on freedom of speech, and banning free speech on the theory that it might be witnessed by a minor. If this standard were to be applied across the board, "Coors Field" will need to be re-named. Billboards advertising alcohol will

need to be torn down. TV ads for alcohol could not be shown in Colorado. This recommendation violates the Free Speech provisions of the Constitution, and disadvantages small businesses that need advertising to stay alive. Advertising is of benefit to the consumer, who can learn of the best deals offered. Advertising also has the benefit of normalizing the image of marijuana to the general public, helping us all move past Prohibition. Our society can tolerate advertisements for many things to which minors have no access.

Recommendation 8.2 – Packaging Requirements

This recommendation is for comprehensive packaging requirements that do not resemble how alcohol is packaged. The recommendation advocates child-proof packaging. "Child proof" packaging is not actually child-proof. This is another feel-good recommendation not based in reality. Actual parenting is the best method to prevent children from accessing alcohol, or marijuana. Alcohol is not packaged in child-proof containers, and this requirement would unnecessarily add to the cost of manufacturing and selling marijuana. Parents can effectively restrict their childrens' access to alcohol or marijuana, through parenting. Government is not a good parent.

Recommendation 8.3 – Labeling Requirements

This recommendation argues against itself. It requires the following label on each piece of marijuana sold in Colorado:

Flower/Buds:

1. ***The license number of the cultivation licensee***
2. ***The license number of the retail center***
3. ***An identity statement and standardized graphic symbol***
4. ***Batch #***
5. ***A net weight statement***
6. ***A potency statement about THC as adopted by the Task Force. If other cannabinoids are included, THC is listed first.***
7. ***A list of any non-organic pesticides or fungicides used during cultivation or production***
8. ***A statement to the effect of "This product is contains marijuana and was cultivated/ produced without regulatory oversight for health, safety, or efficacy and there may be health risks associated with the consumption of the product"***
9. ***Warning labels, to include language similar to the Poison Prevention Packaging Act, a pregnancy/ breastfeeding statement, illegal under age 21, may impair ability to drive, and others adopted by the Task Force***

Labels should include, but are not limited to, the following:

Non-activated Concentrates and Infused Products:

1. *The license number of the cultivation licensee*
2. *The license number of the retail center*
3. *An identity statement and standardized graphic symbol*
4. *Batch #*
5. *A net weight statement*
6. *A potency statement about THC as adopted by the Task Force. If other cannabinoids are included, THC is listed first.*
7. *A list of any non-organic pesticides or fungicides used during production*
8. *A statement regarding the usage of solvents in the extraction process*
9. *A statement to the effect of "This product is contains marijuana and was cultivated/ produced without regulatory oversight for health, safety, or efficacy and there may be health risks associated with the consumption of the product"*
10. *Warning labels, to include language similar to the Poison Prevention Packaging Act, a pregnancy/ breastfeeding statement, illegal under age 21, may impair ability to drive, and others adopted by the Task Force*

All Other Infused Products:

1. *Statement of the Original Equipment Manufacturer's (OEM) name and State Licensing Authority number together with the company's telephone number or mailing address or website information*
2. *An identity statement and standardized graphic symbol*
3. *Batch #*
4. *A net weight statement*
5. *A statement on # of milligrams of THC per serving and # of servings per package*
6. *A list of ingredients and potential allergens*
7. *A potency statement about THC as adopted by the Task Force. If other cannabinoids are included, THC is listed first.*
8. *A list of any non-organic pesticides or fungicides used during production*
9. *A statement regarding the usage of solvents in the extraction process*
10. *A recommended use by or expiration date*
11. *A nutritional fact panel*
12. *A statement to the effect of "This product is infused with marijuana and was produced without regulatory oversight for health, safety, or efficacy and there may be health risks associated with the consumption of the product"*
13. *Warning labels, to include language similar to the Poison Prevention Packaging Act, a pregnancy/ breastfeeding statement, illegal under age 21, may impair ability to drive, and others adopted by the Task Force*

There is no room on any marijuana package for this. Nobody will read it. Labeling is a good idea, and the industry is already doing it, but the scope and size of the recommended information to be required on the label is absurd.

Recommendation 8.4 – THC Potency Labeling

This recommendation would require labeling of THC potency. This is similar to requirements for alcohol. It is a good recommendation, and

should be followed. The industry is doing this already, so it probably need not be mandated. There are currently contests and market competition as to who can supply a higher quantity of THC, and consumers care about potency and should have access to that information.

However, this recommendation exposes an essential flaw in the vertical integration/common ownership model. Testing for THC potency should be accomplished through an independent licensed laboratory that is not vested in the result. If every testing laboratory licensee is also required to be owned by a retail entity as under Vertical Integration, then the testing results are self-serving, biased, and may be influenced by a desire to increase profitability of the retail outlet/grower/infuser/laboratory. Independent, not vertically integrated, laboratories are key to accurate and unbiased potency testing and labeling.

Recommendation 8.5 – THC Potency Limits on Infused Products

This recommendation would limit THC potency on infused products. There is no evidence that this is necessary, especially if the product is labeled with its THC potency and dose, as in the previous recommendation. The Black Market is capable of producing infused products, and would not be subject to any limits on potency. Customers will turn to the Black Market to satisfy demand for prohibited things, which is why Prohibition is a failed governmental policy, a policy that this recommendation would continue.

Recommendation 8.6 – Regulation of Additives in Marijuana Products

This recommendation would regulate or prohibit certain additives in marijuana that are toxic, misleading, "designed to make the product more addictive," and "designed to make the product more appealing to children." The first two, toxic or misleading additives, should be prohibited, so to that extent this recommendation makes sense. But the last two categories are subjective and unenforceable in a fair and predictable manner.

Recommendation 8.7 – Prohibiting Adulterants – Nicotine

This recommendation would prohibit selling marijuana mixed with nicotine. A common way to smoke marijuana is by mixing it with tobacco. In Europe, it is the principal method for consumption of marijuana. It can reduce the amount of marijuana ingested, and balance the effects. It is strange, in conjunction with the other recommendations, that this recommendation would prohibit a popular method for consumers to reduce the concentration of marijuana they use. This recommendation should be

rejected, and adult consumers should be able to combine two legal products together.

Recommendation 8.8 – Prohibiting Adulterants – Alcohol

This recommendation would prohibit selling marijuana mixed with alcohol. As above, this recommendation should be rejected, and adult consumers should be able to combine two legal products together. Ironically, this recommendation calls for Prohibition of alcohol. The ingredient of beer, the hop plant, is a close relative of the marijuana plant. Beer can be brewed using marijuana, and human creativity should be allowed to flourish. If the regulated market is restricted in this manner, the Black Market would meet the demand, and will not be taxed, will not be regulated.

Recommendation 9.1 – Cultivation and Handling Standards

This recommendation would prohibit certain pesticides and chemicals used in the cultivation process. This recommendation is appropriate and should be followed.

Recommendation 9.2 – Good Cultivation and Handling Practices Advisory Group

This recommendation is appropriate and should be followed.

Recommendation 9.3 – Good Laboratory Practices Advisory Group

This recommendation is appropriate and should be followed.

Recommendation 10.1 – Education Oversight Committee

This recommendation is appropriate and should be followed.

Recommendation 10.2 – Marijuana Education for Professionals

This recommendation is appropriate and should be followed.

Recommendation 10.3 – Marijuana Education for the Public

This recommendation is appropriate and should be followed, so long as the education is science-based and not designed after the failed "DARE" model, which actually achieves the opposite result intended; i.e. children

who attend DARE are more likely to use drugs than those who do not attend DARE.

Recommendation 10.4 – Studies of the Health Effects of Marijuana

This recommendation is appropriate and should be followed.

Recommendation 10.5 – Study of Law Enforcement Activity

This recommendation is appropriate and should be followed.

Recommendation 11.1 – Child Care Licensing Consequences

This recommendation is appropriate and should be followed.

Recommendation 11.2 – Excluding Cultivation in a Child Care Family Home

This recommendation is appropriate and should be followed, to the extent it applies only to licensed child care homes, but not homes of the general public. Marijuana can be safely cultivated in residences where children are present, so long as the growing area is properly locked away from children and well-ventilated.

Recommendation 12.1 – Support for HB 13-1444 Regarding Penalties for DUID

There are many reasons to oppose House Bill 13-1114, which would create a permissible inference of Driving Under the Influence ("DUI") criminal offense for drivers with five nanograms or more of tetrahydrocannabinol ("THC") in blood, reversing the Burden of Proof away from "Innocent Until Proven Guilty" to "Guilty Until Proven Innocent."

The bill is not warranted from a scientific standpoint. THC affects everyone differently, and is not well-suited to a uniform numerical standard. From the standpoint of a courtroom litigator who has represented Coloradoans charged with criminal DUI offenses, we oppose this bill and urge a "no" vote, because if passed, innocent people will be convicted.

One case I tried to a jury in the past illustrates the point. In People v. Solimeo, Gunnison County Court Case No. 10T288, the driver had ten nanograms of THC in his blood. There was no accident or victim whatsoever in the case. Mr. Solimeo's performance on voluntary roadside tests was not

perfect, but easily attributed to high winds frequent in Gunnison (even the sober State Patrol Trooper could not perform the roadside tests perfectly in the courtroom when asked to do so).

Despite the ten nanograms, all evidence in the case showed that Mr. Solimeo was perfectly sober, driving well, and not a danger to anyone on the road that night. Mr. Solimeo was aware of the effects of THC on him and could easily compensate for them. Mr. Solimeo did not testify at trial because there was no real evidence against him, and any testimony from him would have been viewed as self-serving and defensive. Accordingly, the jury acquitted Mr. Solimeo of all charges, and even declined to find him guilty of the lesser included offense of Driving While Ability Impaired ("DWAI").

If H.B. 13-1114 and its "Guilty Until Proven Innocent" standard had been law, then Defendants would be forced to "prove a negative" to a jury or judge. It would also force Defendants to waive their right to remain silent and trial, and attempt to explain that they were not impaired. Most defendants in criminal cases, even if innocent, opt not to testify because their testimony would inevitably appear defensive and self-serving, and testifying in one's own criminal trial can be an intensely stressful experience. Accordingly, this bill would place the Defendant at a severe disadvantage, and will result in innocent people being convicted.

The right to remain silent and the presumption of innocence are tried-and-true legal principles that have served well our country and its people. There is no need to cast these important principles aside. Current law already criminalizes driving a vehicle while impaired by THC or any other substance. The vast majority of drivers charged with DUI- D for THC are convicted, and prosecutors are able to satisfy their burden of proof beyond a reasonable doubt, if they have evidence. Current law thus adequately protects public safety. H.B. 13-1114 removes the burden of proof beyond a reasonable doubt, and makes conviction a near certainty because the bill shifts the burden of proof and forces a Defendant to prove a negative.

Recommendation 12.2 – ARIDE Training for Law Enforcement Officers

This recommendation is appropriate and should be followed.

Recommendation 12.3 – Revisions to the Criminal Code

This recommendation does not go nearly far enough. Significant changes should be made to the Criminal Code to being it in line with

Amendment 64, as detailed at the beginning of this letter. Violations of Amendment 64 should be dealt with as civil administrative matters, not as criminal offenses, as Amendment 64 requires. Colorado Constitution, Article XVIII § 16(5)(a)(IX) ("civil penalties for failure to comply with regulations made pursuant to this section.").

Recommendation 12.4 – Consequences for Transfer of Marijuana to 18- to 20-Year Olds

This recommendation should be followed to equate the penalties for transfer of marijuana to a minor to those for transfer of alcohol to a minor.

Recommendation 12.5 – Consequences for Juvenile Possession

This recommendation should be followed to equate the penalties for juvenile possession of marijuana to those for juvenile possession of alcohol.

Recommendation 12.6 – Personal Transport of Marijuana

This recommendation should be followed to equate the penalties for transport of "open" marijuana to those for transport of an "open" container of alcohol, accounting for the packaging differences between the two substances.

Recommendation 13.1 – Amendments to the Colorado Clean Indoor Air Act

This recommendation would add marijuana smoke to tobacco smoke, the indoor smoking of which is prohibited in Colorado except for residences, cigar bars, and clubs. There is no rationale for this recommendation, and it should be rejected. The Clean Indoor Air Act is based upon the demonstrated harm to people from second-hand tobacco smoke. There is no evidence, not a single study, that second-hand marijuana smoke is harmful. Marijuana smoke lacks the carcinogens, tar, and nicotine in tobacco. Moreover, the recommendation reveals a curious hostility to marijuana smokers when it adds there should be no exceptions to this smoking ban, unlike the tobacco smoking ban which exempts certain classes of licensees, such as cigar bars, cabarets, clubs, and the like. Unless there is some demonstrated harm presented by second-hand marijuana smoke, it ought not be included in the indoor smoking ban, especially because unlike tobacco, outdoor smoking of marijuana is not an option and not authorized in all circumstances under Amendment 64 if such smoking is done publicly and openly.

Recommendation 13.2 – Clarification of an Offense

This particular recommendation is confusing. It recommends "the General Assembly adopt legislation to define 'offense' under Amendment 64 as a criminal violation and not a civil violation," then goes on to argue that local jurisdictions need the power to enforce marijuana laws and regulations through civil injunctive relief and civil fines. Perhaps this is a typographical error. If the recommendation is for a criminalization of violations of Amendment 64, then it should be rejected because Amendment 64, as noted, clearly states that violations of it are to civil violations. See Colorado Constitution, Article XVIII §16(5)(a)(IX) ("civil penalties for failure to comply with regulations made pursuant to this section.") If the recommendation is for civil-only violations, then it is appropriate.

Recommendation 14.1 – Enclosed, Locked Space and Not Growing Openly or Publicly

This is a recommendation to define these concepts in Amendment 64. The proposed definition of "enclosed locked space" as including "covered from above and enclosed on all sides," is far too narrow and would not permit outdoor growing even if the growing were behind an enclosed, locked fence. Outdoor growing can be done safely and securely. At this point, indoor growing is still the preferred method for many reasons including Colorado's temperature and growing season, but an advantage of outdoor growing is that it can be cheaper and more environmentally-conscious since it does not use power and fossil fuels, but rather the sun. Outdoor growing should be allowed as long as it is done in an enclosed locked space. The proposed definitions of "openly" and "publicly" make sense, and should be adopted.

Recommendation 14.2 – Prohibiting the Use of Flammable Gases

This recommendation is to prohibit the use of flammable gases such as butane, hexane, and propane, which are commonly used in the extraction and production process. There is little scientific or empirical evidence that these gases are harmful to the consumer or dangerous to the user. The quantities used in the process are miniscule. These gases are perfectly legal and easily available in the general market, and not regulated or restricted to the general public for non-marijuana related purposes. These gases can be, and are, used safely thousands of times per day throughout Colorado, and should not be prohibited.

Recommendation 15.1 – Banking Solutions for Legal Marijuana Businesses

This recommendation is for the Legislature to take various steps to resolve the banking problem, brought on by banks deciding to interpret federal law in a manner wherein some, but not all, banks are unwilling to do business with certain marijuana businesses. The recommendation is appropriate, creativity is needed here, but the true long-term solution to this problem lies at the Federal level.

Recommendation 15.2 – Business Deductions for Legal Marijuana Business

This recommendation is appropriate and should be followed.

Recommendation 16.1 – Maintaining the Status Quo for Employers and Employees

This recommendation seeks to maintain the status quo in employment issues, but also recommends that employers should review their drug-free policies in light of Amendment 64's passage. Amendment 64 provides that employers need not accommodate marijuana use "in the workplace," Colorado Constitution Article XVIII § 16(6)(a), but there is nothing in the Amendment that permits an employer to fire or discipline an employee for conduct outside of the workplace, engaged in during the employee's personal time, that is otherwise legal. Under C.R.S. § 24-42-402.5, it is unlawful and a discriminatory or unfair employment practice to terminate an employee for off-premises conduct that is otherwise legal.

Recommendation 16.2 – Maintaining the Status Quo for Property Owners

This recommendation is appropriate and should be followed.

Recommendation 16.3 – Enforcement of Contracts

This recommendation is appropriate and should be followed. The issue of whether contracts are enforceable is uncertain and unsettled in Colorado state courts. The Legislature could bring some degree of clarity to this unsettled area of the law, an area that cries out for a binding decision either way. Trial-level courts in Colorado have come down on all sides of the issue of whether a contract is enforceable or not. Businesspeople need

predictability to make business decisions. Although the Legislature could do much to clarify the issue, the long-term solution lies at the federal level.

Recommendation 16.4 – Legislation on Industrial Hemp

This recommendation is appropriate and should be followed.

Recommendation 17.1 – Formation of a Follow-Up Task Force in Three Years

If the follow-up task force is appointed and operates similarly to this task force, then a follow-up task force might not provide much added value. A follow-up task force may only seek to further the government-sponsored monopoly and consolidate its political power to the detriment of the public interest.

In conclusion, we hope that this analysis is helpful as the Legislature evaluates how to implement this historic and significant constitutional provision. Colorado can lead the way in a new direction on eliminating the vestiges of the failed policy of Marijuana Prohibition, ceasing the wasteful abuse of the overburdened criminal justice system to deal with marijuana, as Colorado's voters intended.

Thank you very much for your consideration of our thoughts. We expect to continue our participation in the legislative process, and we would be happy to answer any questions that you have. My cell phone is 720-629-7112 and email address is Robert.Corry@comcast.net. Thank you again.

Sincerely,

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